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Draft Council of Europe convention on the Co-Production of Audiovisual Works in the Form of Series

Report[1]
Committee on Culture, Science, Education and Media
Rapporteur: Ms Valentina GRIPPO, Italy, Alliance of Liberals and Democrats for Europe

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1. Reference to committee: Doc. 16164, Reference 4883 of 23 May 2025.

A. Draft opinion[2]

1. The Parliamentary Assembly welcomes the finalisation of the draft Council of Europe convention on the co-production of audiovisual works in the form of series (hereinafter the "draft convention") and commends its ambition to promote cross-border collaboration and cultural diversity.

2. Certain member States, industry representatives, and the European Union have raised concerns regarding the absence of an impact assessment, the inadequate consultation of stakeholders, and the risks associated with certain elements of the draft convention.

3. Some issues require further consideration to enable the greatest number of member States to ratify the convention with confidence in its benefits, free from fear of unintended side effects on their local ecosystems.

4. The draft convention defines the term "independent co-producers" as "audiovisual production companies that are bound by a co-production contract and qualify as independent under the domestic law provisions of their countries of establishment or, in the absence of such provisions, that satisfy the criteria of independence as set out in Appendix III".

5. Such a definition may generate normative interference with domestic legal frameworks and public support regimes, resulting in regulatory misalignment, reducing the effectiveness of national mechanisms, and deterring stakeholder participation in co-productions. Although the definition set out in Appendix III applies only in the absence of domestic legislation, it can still be considered a *de facto* supranational standard. This could exert undue normative pressure on States, distort eligibility criteria for public funding, and compromise the principle of subsidiarity that underpins the autonomy of national audiovisual ecosystems.

6. Accordingly, the Assembly considers it essential that each State defines independence in a manner that reflects its own audiovisual ecosystem.

7. Moreover, the rules regarding copyright, data sharing, and artistic control impose restrictions that may undermine established practices or legal harmonisation at European Union level.

8. Consequently, the Assembly recommends that the Committee of Ministers, before considering its adoption, carry out a market analysis and an impact assessment of the draft convention with the participation of stakeholders. Furthermore, it recommends that the Committee of Ministers make the following amendments to the draft convention:

8.1. include a provision requiring that each signatory which does not have a definition of "independent producer" for the purposes of the draft convention shall adopt such a definition before the entry into force of the convention in its territory;

8.2. redraft Article 3(e) as follows: "the term 'independent co-producers' shall mean audio-visual production companies that are bound by a co-production contract and qualify as independent under the relevant rules of their countries of establishment";

8.3. in Article 7(1), delete the second sentence worded as follows: "The allocation of shares should take into account the respective financial contributions of the independent co-producers and their creative and technical expenditures";

8.4. delete Article 7(2);

8.5. in Article 7(3) delete the second sentence worded as follows: "Exploitation rights may not be licensed in perpetuity and the periods of licensing shall allow the independent co-producers to benefit from the residual value of the rights";

8.6. in Article 8(3), delete the words: "manage and";

8.7. redraft Article 9 as follows: "Understanding of the success and circulation of officially co-produced series 1. Audiovisual media service providers and their subsidiaries established in Parties to the Convention shall provide audience data and information on the exploitation of series that have obtained official co-production status and received financial benefits pursuant to Article 4, to competent authorities, as defined in Article 5, paragraph 5, provided it is required by national legislative and regulatory provisions. Competent authorities shall treat this information confidentially.";

8.8. in Appendix II, point 1, paragraph 2, delete the words: "or of Appendix III";

8.9. delete Appendix III.

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2. Draft opinion adopted by the committee on 24 June 2025.

9. The Assembly also recommends that the Committee of Ministers make the necessary amendments to the draft explanatory report to reflect those made to the draft convention.

B. Explanatory memorandum by Ms Valentina Grippo, rapporteur[3]

1. Introduction

1. The European Convention on Cinematographic Co-Production (ETS No. 147) has been met with resounding success, having been ratified by 43 countries, and is utilised on a daily basis throughout Europe. However, technological change and the arrival of streaming platforms in Europe have totally modified viewing habits and consumer expectations. Similarly, high quality drama series have also reshaped the landscape for audiovisual production. This remodelling of the landscape and its possible implications have led the Council of Europe to look more closely at this issue, particularly with regard to cultural diversity and pluralism.

2. Starting in 2019, this interest took the form of a series of studies and other preparatory measures, and then in 2022 became a formal process within the Council of Europe. Some of the key milestones along the way included a multistakeholder conference in Budapest in 2020. And this in turn informed the findings of a Council of Europe Conference of Ministers of Culture in 2022, which led to a final ministerial declaration. As a result of that, the Committee of Ministers asked the Steering Committee for Culture, Heritage and Landscape (CDCPP) to work on this topic by setting up an expert working group to author a legal instrument.

3. On 19 November 2024, the CDCPP approved the report on the elaboration of a legal instrument to facilitate the international co-production of audiovisual works in the form of series. The report includes a draft Council of Europe convention on the co-production of audiovisual works in the form of series (hereinafter "the draft convention"), along with its explanatory report. This draft convention and its explanatory report were submitted to the Committee of Ministers for consideration and possible adoption.

4. The draft convention establishes rules of international law intended to govern relations between States in the co-production of series originating in their territories.

5. As emphasised by the working group that prepared the draft convention, the aim of this legal instrument is to foster independent co-production of series and participation of broadcasters in such co-productions.

6. However, both the drafting process and the substantive provisions of the draft convention have been criticised by some stakeholders, including public and private actors, audiovisual industry associations, several member States, and the European Commission. These concerns were raised during public consultations and formal hearings held by the Committee on Culture, Science, Education and Media, and are further substantiated in the explanatory memorandum.

7. In particular, significant reservations have been expressed with regard to the definition of "independent producer" introduced in Article 3 and Appendix III, as well as to provisions concerning intellectual property, licensing durations, data sharing, and creative control.

8. While the objective of promoting independent co-productions is broadly shared, the current draft is seen by some stakeholders as introducing regulatory misalignment and structural imbalances that could compromise rather than enhance the functioning and competitiveness of the existing audiovisual ecosystem.

9. These concerns go beyond technical adjustments: they directly affect the capacity of the convention to be ratified and effectively implemented by a broad range of States. Without clearer definitions and adequate safeguards, national authorities may encounter difficulties in reconciling the convention's provisions with their legal systems and cultural policy instruments. In addition, the European Commission has signalled potential interference with the forthcoming revision of the European Union's Audiovisual Media Services Directive (AVMSD), further reinforcing the need for regulatory coherence and caution.

10. As highlighted above, three major systemic risks have emerged:

– the risk of normative interference with national frameworks regulating independence and public support;

– the restriction of contractual autonomy, especially in rights management and licensing arrangements;

– the fact that the convention focuses on the status of the producer rather than on the characteristics of the work, thereby excluding a priori the possibility that producers not qualifying as "independent" might create works that fully meet the objectives of cultural diversity and international co-operation promoted by the convention.

3. The explanatory memorandum is drawn up under the responsibility of the rapporteur.

11. Moreover, it has been observed that the assumption underpinning the draft convention – that works produced by "independent producers", as narrowly defined, are inherently more conducive to cultural diversity than other works – warrants careful reconsideration. While independent producers contribute meaningfully to cultural pluralism, other production models also play an essential role in fostering freedom of expression, audience access, and innovation.

12. At the same time, given the current imbalance of market power within the audiovisual sector – where global platforms and vertically integrated conglomerates increasingly dominate production and distribution — it is relevant to establish a normative framework that commits all Council of Europe member States to actively promote and support the networking and international competitiveness of their national independent creative energies. Such a commitment should not only ensure a level playing field but also empower independent producers to thrive in a highly concentrated and competitive market, preserving the diversity of voices, formats, and stories across Europe.

2. The path towards the draft convention

13. In 2019, the Council of Europe and its enlarged partial agreement Eurimages commissioned a study from an independent consultant in order to better understand the changing environment created by the emergence of video-on-demand (VOD) platforms and the use of artificial intelligence (AI) in the distribution of audiovisual content. Its findings were presented in December 2019 to the Board of Management of Eurimages.

14. Under the auspices of the Hungarian Presidency of the Committee of Ministers of the Council of Europe, a conference entitled "Preserving Independent Production, Diversity and Pluralism in Drama Series in Europe: Can International Cooperation be Part of the Solution?" was held in Budapest on 30 September-1 October 2021. In their conclusions, the conference participants highlighted the necessity for international co-productions to offset the fragmentation of the European audiovisual market, especially for smaller countries with limited financial means. They called for the creation of a financial instrument to support the co-production of series and the establishment of a legal framework to delineate the rules governing series co-productions, thereby fostering more transparent practice and empowering independent producers to safeguard their rights during negotiations with broadcasters and global platforms. Acknowledging the groundwork carried out during this conference and the future steps to be taken during successive presidencies of the Committee of Ministers, the Hungarian authorities named this initiative "The Budapest Drama Series Process".

15. On 1 April 2022, through their joint declaration on the occasion of the Council of Europe Conference of Ministers of Culture, the latter expressed their concern about the challenges posed to cultural diversity and pluralism by the broad use of business models based on algorithmic recommendations, with specific reference to the audiovisual sector, and took note of the dominant position of non-European audiovisual media services and their impact on content production ecosystems and on European intellectual property ownership. The Ministers of Culture invited the Committee of Ministers of the Council of Europe to continue supporting the Budapest Drama Series Process and to develop – through CDCPP and Eurimages future work – a new pan-European legal instrument to codify the rules of European drama series co-productions and a public financial instrument for these co-productions.

16. As a result of the Budapest Drama Series Process, the Council of Europe introduced a new three-year Pilot Programme for Series Co-productions which supports high-quality series made as international co-productions and aims to empower independent producers and foster new relationships. The programme is administered by the Council of Europe with funding provided by donors through the Organisation's voluntary contributions system. Its aims are the following:

– creating a flexible financing mechanism to fit in with the extremely dynamic business environment for series;
– nourishing independent serial storytelling in the form of international co-productions;
– stimulating the circulation of culturally and linguistically diverse works across the member States;
– including the principles of shared IP and secondary rights ownership in the co-production;
– integrating the participation of all audiovisual media service providers;
– incentivising the member State that participate in the programme to keep creative control over the series co-production where players from outside the member States are involved.

17. In May 2022, Eurimages commissioned an independent report aiming to assist in the development of a new legal instrument to codify the rules of European drama series co-productions. The report concluded that many of the provisions of the Council of Europe Convention on Cinematographic Co-Production (revised) (CETS No. 220) could be transposed to a new legal instrument for series co-production. It also made four recommendations concerning the definition of "eligible work", the thresholds set for minimum investments by minority co-producers, the definition of co-ownership and the valorisation of the creative role of the producer in the point system.

18. A working group, the CPPWG-SERIES, was established under the supervision of the CDCPP and entrusted with the task of assessing the possible creation of a legal instrument to support European drama series, and if appropriate drawing up such an instrument, possibly in the form of a convention taking into account recent technological and financial changes in the European film and drama sector.

19. Between 2022 and 2024, the CPPWG-SERIES worked on a proposal for a text of a draft convention which it adopted on 13 September 2024 and submitted to the CDCPP for consideration. The members of the Steering Committee on Media and Information Society (CDMSI) were also consulted. The CDCPP approved the draft text at its meeting on 19 November 2024 and subsequently submitted it to the Committee of Ministers of the Council of Europe for their consideration and adoption.

20. On 23 April 2025, the Committee of Ministers referred the draft convention to the Parliamentary Assembly for opinion.

3. Key elements of the draft convention

21. Series production is not the same as film production because of different financial stakes and risks and partners involved, including European and non-European platforms. And in the same vein, the cultural impact of series as vectors of European storytelling on a diversity of themes in a wide range of languages is also probably greater. So even if the Convention on Cinematographic Co-Production provided the initial starting point, the final draft convention that emerged is significantly adapted to respond to the specific nature of series production and to the mandate that was given to the CDCPP.

22. The draft convention provides a legal framework for a specific type of series co-productions between two or more independent co-producers who can thus obtain official recognition for the series they co-produce. This official status improves the financial capacity of these producers, and it facilitates co-operation across borders.

23. In theory, an official co-production under the draft convention would function as follows: two or more independent producers from two different Parties to the convention would work together to produce a series following the rules provided for in the convention. This would allow them to access further public funding and support in line with their countries' national policies for the support of audiovisual works. These producers would retain a share of ownership in the series and thus they would create value for their companies. Broadcasters and other partners with whom these producers would be working could also reduce their financial risk due to the improved access to public funding, and co-producers would obtain access to data that allows them to better understand the success of the series.

24. The concept of "independent producer" is defined in the national legislation of many member States, with each adopting a definition appropriate to its national market and policy. Moreover, this definition can apply to the implementation of obligations included in the AVMSD, and for the purposes of providing public support for the production of audiovisual works. Therefore, there can be more than one definition of 'independent producer' in a given country.

25. A report of the European Audiovisual Observatory (covering the European Union, Norway, Switzerland and the United Kingdom) describes the variety of definitions at national level and highlights the flexibility of countries and regions in interpreting independence. The report provides the following conclusions:

– there is no settled and unified definition across Europe. While the main criteria (financial, operational and IPR) are consistently used, their application varies significantly;

– countries and regions often tailor these criteria to sub-categories, applying thresholds with varying degrees of specificity. Furthermore, the scope of independence sometimes extends beyond traditional broadcasters and VOD services, in some cases encompassing, for instance, educational institutions or local governments;

– on the other hand, some funding structures introduce additional requirements reflecting more local priorities. For instance, under Swiss law, the producer/production company must be domiciled in Switzerland (the equity and borrowed capital as well as the management are predominantly held and controlled by persons with domicile in Switzerland). Regional funds can leave aside the notion of independence to focus on promoting their territories, requiring applicants to shoot partially or entirely within the region to showcase it on-screen;

– Furthermore, sometimes in practice, the notion of independence can be applied with a different understanding, not focusing on AVMS providers but on another type of financial independence. For instance, in Cyprus, the national film fund recognises the independence of producers when the latter have not received funding from the Ministry of Culture;

– Finally, it should not be forgotten that legislation can change rapidly.

26. In cases where there is no domestic law provision defining the notion of "independent producer", the draft convention, in the interest of ensuring a level playing field among all the producers, provides two general criteria which are set out in Appendix III, and these criteria can be referred to by the authorities when they are to decide if a co-production qualifies as official. In case of future changes in domestic definitions, these would then take precedence and regulate the situation of independent producers. In the rare cases where there is no definition in domestic law provisions, the two criteria from Appendix III would apply, allowing the relevant national authorities to assess independence.

27. In short, the draft convention is intended to encourage diverse storytelling across member States and their cultures, promote co-operation, talent, mobility and cultural exchange, enable the sharing of the financial burden of producing high quality series and thus to reduce the risk in this very high-stakes area. Moreover, it is intended to strengthen the position of independent producers in Europe, while at the same time allowing all of the many other varieties of co-productions outside its scope to continue.

4. Concerns raised by some stakeholders

28. Given the criticism expressed by representatives of broadcasters and other media service providers mentioned above, and with the aim of gaining a more comprehensive understanding of the various perspectives involved, the Committee on Culture, Science, Education and Media held a hearing on 12 March 2025 with the participation of Ms Susan Newman-Baudais, Executive Director of Eurimages; Ms Mathilde Fiquet, Secretary General of the European Audiovisual Production Association (CEPI); Mr James Hickey, General Counsel at the European Producers Club (EPC); Mr Richard Burnley, Legal and Policy Director of the European Broadcasting Union (EBU); Mr Erard Gilles, Senior Director at the Association of Commercial Television and Video on Demand Services in Europe (ACT); Mr Chris Marcich, President of the European Film Agency Directors association (EFAD).

29. During this hearing, the representatives of independent producers' associations EPC and CEPI, together with the EFAD, showed a strong support for the text of the draft convention.

30. Ms Fiquet (CEPI) focused on two aspects: what the draft convention did not do, and why it was important for independent producers. First, the draft convention did not create a new definition of independence. Only in the absence of a national definition, the draft convention provided two broad criteria in Appendix III of the document. This was a very important distinction which allowed each member State to rely on those criteria in a manner that worked for them, their national ecosystem and their national film fund. Ms Fiquet clarified also that the draft convention would not replace existing co-production models and would not limit the capacity of producers to co-produce outside its scope. The objective of the draft convention was to support culturally valuable co-production of audio-visual works in the form of series in co-operation with broadcasters and platforms. This was reflected in the draft convention with the explicit recognition of the role of the independent producers in the promotion of cultural diversity in series. This exercise was also fully in line with the mission of the Council of Europe to preserve cultural diversity and pluralism in the audio-visual sector in a manner that directly supported democracy in our societies.

31. Ms Fiquet stressed the fact that the draft convention relies on the national definition of independent producer, and most countries provided such definition in their national legislation. Regarding the criteria set in Appendix III, they were meant to be interpreted by the few member States that do not have a definition. Without an Appendix III, there would be uncertainty about how the draft convention would apply to countries that do not have a definition, and that could lead to a certain level of discrimination for co-productions with producers from that country. Regarding intellectual property, it was important to recognise that the draft convention actually suggested a sharing of the rights between all the different partners involved in the co-

production, and the sentence which recognised this sharing of rights took into consideration the creative and technical involvement of all the partners. The draft convention was a balanced text and could indeed differ from practices currently in place in the series and television world where broadcasters tended to acquire the entire intellectual property rights of the series. The draft convention aimed to set up an environment with a level playing field for independent producers. It would be a flexible environment with an aim toward recognising the added value of the independent producers without undermining the creative and economic input of the broadcaster.

32. Mr Hickey (EPC) explained that nowadays the proportion of co-productions in the cinema sector was much higher than in the TV drama field: for the period 2015-2023, only 10% of European series were co-produced while co-productions accounted for more than 20% of European films. More European co-productions were necessary in TV drama as they were a booster for circulation and audience development and the future convention would be an accelerator by facilitating access to different countries funding support. The draft convention was an addition to existing arrangements, not a replacement. Moreover, the draft convention did not define "independent producer" and Appendix III left the definition of "independent producer" entirely to the member States themselves with just a couple of general criteria to deal with it.

33. Mr Marcich (EFAD) explained that the draft convention was about promoting independent production of series and was not a broadcaster treaty. It would sit alongside all of the production activities already mentioned and would not interfere with those. Furthermore, it did not interfere with the EU's AVMSD and did not harmonise any definition of independent production. That would be left to member States to decide, as it was the case now. The draft convention strengthened the cultural diversity provisions in the sense that it would make it more viable to produce culturally diverse creative series across Europe.

34. Regarding the danger of broadcasters' control over independent production, Mr Marcich explained that this was the reason why in the European AVMSD there was a specific quota requiring independent production of audiovisual works in Europe to make sure that there was some independent production. If a company like a broadcaster that was a partial investor and a partial creator of the programme obtained perpetual rights for the work in question, this could condemn those works to remain unexploited in a broadcasters' portfolio. The idea behind the draft convention was that works supported by State aid should be available to the public. Finally, he explained that the draft convention would not disadvantage European companies. It provided for up to 30% involvement of so-called non-member investors. It aimed to promote the strength of the independent European production sector, but there was room for everyone, and broadcasters would also benefit from it. No one was excluded from the drafting process and the terms of the draft convention changed as comments were heard.

35. The associations representing European broadcasters, both commercial (ACT) and public service (EBU), raised significant criticism regarding both the text of the draft convention and its drafting process.

36. Mr Burnley (EBU) explained that a crucial aspect of their democratic mission was to support local creative ecosystems by partnering with production companies, which should happen on fair terms. Independent producers played an important role, but other players also had a role to play. EBU supported the broad goals of the draft convention, but regretted certain procedural shortcomings in the drafting procedure. EBU stressed that the European co-production market was diverse and evolving, with global actors causing significant disruption. This situation warranted a thorough market analysis and consultation because without that, the future convention risked being ineffective if not harmful. Mr Burnley said that, as a general point, if one sector was heavily in favour of an instrument and one sector was heavily against it, that was maybe an indication of a lack of balance that needed to be looked into. That is the reason why they were saying that there was a need to undertake a deeper market analysis into markets that are very dynamic and a sector with very complex ownership structures. Some independent producers could be much stronger and bigger than broadcasters these days and could be owned by global companies. Also, the crucial issue here was the interference in the contractual and creative freedoms of broadcasters in co-productions, since this could lead for broadcasters to withdraw from investing in independent production.

37. From EBU's perspective, the following amendments were indispensable:

– broadcasters should be able to retain IP rights in co-productions. Public service media, like other players, needed to secure fair returns on their investments through IP rights and/or splits on commercial revenues. This was even more the case because their members operated with public funds;

– public service media should be allowed to obtain exploitation rights in perpetuity. There was no reason why regulation should dictate for which duration a broadcaster co-producing can or cannot obtain exploitation rights. This was particularly important for series where public service media were an important investor;

– public service media should be able to continue their involvement in the creative process since co-production was a team effort; not only on the financial side, but on the content side itself, both public service media and the production companies constructively worked together to make the best quality content possible. Obviously for public service media, the quality and also the messages and themes incorporated in their programming were essential because of their public service mission. Failing to meet public service media's needs in the convention could have severe effects on the European media ecosystem. In EBU's view, public service media would be forced to move productions in-house to maintain creative control and/or reduce their investment to the detriment of local producers and cultural diversity in general.

38. In EBU's view, the solution to the current crisis in the audiovisual sector lied in nurturing collaboration between public service media, European broadcasters and local producers, which in turn would promote European cultural diversity. EBU supported the draft convention's broad goals and aims, but strongly advocated for a more comprehensive, analytical and inclusive process to refine it. Significant amendments were necessary to address the core issue – the adverse impact on European cultural diversity caused by powerful global actors in the European audiovisual market. The draft convention should effectively protect and promote the rich tapestry of European cultural diversity. The EBU remained committed to working with the Council of Europe to create a framework that truly supports European audiovisual production.

39. Mr Gilles (ACT) welcomed and supported the objectives of the draft convention, namely, to enhance TV series co-production in Europe and to ensure that European productions can secure necessary financing. He explained that ACT's members had a long track record of successful co-productions that have enriched Europe's cultural landscape and demonstrated the strength of their creative industry. He explained that commercial broadcasters commissioned 56% of the hours of series produced, while streamers only represented 5% of hours. In the current context where global streamers were reducing their investments in fiction, broadcasters (public and private) and their sustainability would long continue to be a key driver of European production. However, ACT was concerned about where the draft convention was going. Despite their attempts to engage constructively, the development of the draft convention had been marked by significant shortcomings. Specifically, the draft convention failed to acknowledge the crucial role that broadcasters played in the creative development and financing of TV series. Not merely distributors or pipes, broadcasters were often the primary investor and creative partner in the series development from initial concept to production. Their expertise, investments and active involvement in all stages of the production process had been instrumental in creating many of Europe's most successful series.

40. According to ACT, the draft convention introduced overly restrictive definitions that did not align with industry realities, limited its scope to co-production between certain kinds of producers, and attempted to introduce intellectual property rules and restrictions to creative processes in an instrument where they had no place. Mr Gilles explained that the main disagreements were, firstly, the idea of harmonising the definition of independent production in this text. Given that the Council of Europe is a standard-setting organisation, this concept in the draft convention was problematic. Secondly, ACT found deeply problematic the restrictions on who can own intellectual property rights included in Article 7 of the draft convention. Third big concern was Article 8 of the draft convention, which dealt with the control of the creative process. Television companies were deeply involved in the creative process because they knew best their audience and needed to be involved in the production of the series.

41. As a point of reference, the equivalent of the draft convention for cinema would be the Convention on Cinematographic Co-Production, which did not have such a narrow focus or such far reaching rules despite the actually greater role that independent production had in the film sector. In ACT's view, this was largely due to a process that bypassed substantive policy discussions. The draft convention had the potential to significantly impact Europe's media ecosystem. However, it seemed to have been developed with limited understanding of how TV series were actually financed and produced in today's market. This was not surprising, given that the drivers behind this initiative came more from the cinema sector, which worked very differently from the TV sector. Key players, particularly European broadcasters, were largely sidelined from the process and even independent legal advice commissioned by Eurimages was largely ignored. Given these serious concerns, ACT called on the Committee on Culture, Science, Education and Media to recommend further discussions on the convention at the political level. In their view, a comprehensive reassessment of the draft convention's aims, methods and content was needed, including a proper impact assessment and meaningful stakeholder consultations because this had not been the case to date. Moreover, the work of the Council of Europe should not conflict with existing European Union frameworks, initiatives and objectives. This is something that had been echoed by the European Commission in the context of the discussions around the draft convention.

42. Mr Gilles emphasised that this position was not only ACT's. On 15 October 2024, a joint call from several associations representing Europe's audiovisual media services (including notably ACT)[4] went as far as to ask that the work carried out by the CPPWG-Series be disregarded in its entirety. According to their letter, the draft convention contains "detrimental provisions for Europe's audiovisual media companies. In particular, it introduces a problematic approach to independent production, limits intellectual property rights and contractual freedom, restricts means to contribute to co-productions, imposes unreasonable restrictions on creative processes, presents problematic obligations for audiovisual media services and creates red tape for the allocation of public funding." The letter further denounced the undue influence of interest groups that have argued that broadcasters are mere financiers and should not be classified as "co-producers" in the same vein as "production companies". According to the signatories, this is "inherently at odds with the day-to-day reality of the sector where broadcasters finance and produce the overwhelming majority of audiovisual works and notably series, whilst taking on a substantial part of risk in these investments." All producers, be they independent or affiliated, equally contributed to cultural diversity and pluralism and deserved recognition.

5. Concerns raised by the European Commission regarding the definition of "independent producer"

43. As explained by the European Commission in a letter to the Secrétariat of the Council of Europe dated 12 September 2024 that I have had access to, the introduction of a definition, by default, of the concept of "independent producer" in the absence of a definition in national legislation could "hinder the process and the necessary reflections" on the concept of independent production that will be part of the review of the EU's AMSD – to be completed in 2026. This review "will take into account the ongoing transformation of the European audiovisual landscape where new players such as video-sharing platforms or global tech companies play an increasing role, and where some European production companies that are deemed independent have an economic weight that is just as important or even greater than that of broadcasters."

44. On 15 April 2025, the European Commission softened its position by stating the following during a meeting of the Rapporteur Group on Education, Culture, Sport, Youth and Environment (GR-C): "We share the goal of the convention to foster co-productions in the field of TV series. The Convention and the Explanatory Report should be clear in the sense that the definition of "'independent producer'" is indicative and residual and ceases to apply where a Party introduces a definition under "domestic law". Should a definition of "'independent producer'" be established under EU law, that definition should be considered as "domestic law" of any EU member State that previously acceded to the Convention and the definition in the Convention then cease to be binding on that EU member State. The EU, so far, has deliberately chosen not to provide such a definition at EU level for several reasons, including the existence of many different national legal frameworks and cultural traditions, and the need to adapt to a constantly evolving media market. This being said, as a follow-up to the upcoming evaluation of the AVMSD, the EU might opt for such a definition. The Convention should not result in prejudging or forestalling any such potential definition."

6. Proposals for improvements

45. In order to fully realise the convention's potential and ensure that it is both widely adopted and uniformly implemented across different jurisdictions, I believe that a few targeted adjustments are necessary. These refinements do not aim to dilute the value of the convention, but rather to enhance its clarity, effectiveness and practical applicability in diverse national frameworks.

46. It is crucial that the draft convention does not unintentionally introduce structural imbalances or constraints that may undermine the diversity and competitiveness of the European audiovisual ecosystem.

47. The drafting process would have benefited from a more comprehensive market analysis and an impact assessment to better support the underlying objectives of the convention. The markets in question are very dynamic and the sector has complex ownership structures. In fact, some independent producers are much stronger and bigger than broadcasters and are owned by global companies.

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4. The letter is signed by the following associations: ACT – Association of Commercial Television and Video on Demand Services in Europe, ABBRO – Association of Bulgarian Broadcasters, AEVOD – Asociacion Española de VOD, ARCA – Asociatia Română de Comunicaţii Audiovizuale, AKTV – Asociace komerčních televizí, ATVS – Asociácia televíznych vysielateľov Slovenska, COBA – The Association for Commercial Broadcasters and On-Demand Services, ERL – Eesti Ringhäälingute Liit, Finnmedia – Finnish Media Federation, KIGEiT – Krajowa Izba Gospodarcza Elektroniki i Telekomunikacji, LRA – Latvijas Raidorganizāciju Asociācija, LRTA – Lietuvos Radijo ir Televizijos Asociacija, MEME – Magyar Elektronikus Műsorszolgáltatók Egyesülete, UTECA – Unión Televisiones Comerciales En Abierto, VAUNET – Verband Privater Medien, VCO – Vereniging Commerciële Omroepen, VÖP – Verband Österreichischer Privatsender, VSPF/ATPS – Verband Schweizer Privat Fernsehen / Association des Télévisions Privées Suisses.

48. Moreover, the interference in the contractual and creative freedom of broadcasters in co-productions covered by the scope of the draft convention may lead them to withdraw from investing in the independent co-production of series.

49. Regarding the text of the draft convention itself, there are a number of issues that require further consideration.

50. Article 3(e) of the draft convention defines the term "independent co-producers" as "audiovisual production companies that are bound by a co-production contract and qualify as independent under the domestic law provisions of their countries of establishment or, in the absence of such provisions, that satisfy the criteria of independence as set out in Appendix III".

51. Appendix III states the following: "In the absence of domestic law provisions and for the application of Article 3, sub-paragraph e, the competent authorities of the Parties concerned shall define an audiovisual production company as independent with reference to the following criteria:

– the company is not majority controlled, either directly or indirectly, by a media service provider;

– the company does not solely or to a large extent depend on a single or group of media service providers for the financing of its works; it assumes the responsibility for the delivery of its works and can make decisions on the distribution using a variety of players."

52. I do not question the importance of having a clear definition of "'independent producer'. However, such a definition should stem from the specific characteristics and needs of each national market and be developed autonomously through domestic legislative or regulatory processes. A harmonisation of such an important legal definition must not come at the expense of the diversity of public and private support systems that have already been established and proven effective. Imposing definitions at convention level risks creating legal uncertainty, undermining well-functioning national mechanisms, and discouraging investment. I therefore consider it essential to uphold the principle of subsidiarity, enabling each State to define independence in a manner that reflects its own audiovisual ecosystem.

53. In addition, introducing a definition through the draft convention for those States that currently lack one may place undue normative pressure on national systems, particularly where there is no consensus or existing legal basis for such a definition. Although the definition is formally framed as a subsidiary clause it may nonetheless be construed *de facto* as a supranational standard.

54. For all these reasons, and in order to respect national diversity while promoting coherence, I suggest that the draft convention avoid codifying any single definition of "'independent producer'". Instead, each signatory which does not have a definition of "'independent producer'" for the purposes of the draft convention should adopt their own definition before the entry into force of the convention in its territory. This approach would strike a balance between respecting national sovereignty and ensuring transparency and accountability in the application of public support mechanisms.

55. In another respect, the introduction of rules regarding intellectual property and artistic control imposes restrictions on contractual freedom and rights management, potentially undermining established practices and existing harmonisation at the European level.

56. Finally, while I acknowledge that competent authorities may need data to understand the effectiveness and efficiency of public spending and/or their programmes, the introduction of mandatory data sharing obligations raises concerns about commercial confidentiality, as they could reveal sensitive information about audiovisual companies' business strategies and operations.

7. Conclusions

57. I invite the Assembly to welcome this timely initiative to adopt a new convention on the co-production of audiovisual works in the form of series and I commend the approach and principles inspiring the draft convention. As outlined in the previous section, amendments proposed in the draft opinion aim to enhance the clarity, effectiveness and practical applicability of the convention within a range of national frameworks.